

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Section 93AA Australian Securities & Investments Commission Act 1989 (ASC Law)

The commitments in this undertaking are offered to the Australian Securities and Investments Commission ("ASIC") by:

Neil John White
8 Merchiston Grove
STRATHMORE VIC 3041

and

Glenn Rainer Meuwissen
1 Mill Road
KILMORE VIC 3764

collectively referred to as "White and Meuwissen"

1. BACKGROUND

1.1 White and Meuwissen were representatives of:

1.1.1 Colonial Financial Services Pty Ltd for the period from on or about 2 June 1994 to 9 November 1998;

1.1.2 Garrisons Pty Ltd for the period from on or about 28 November 1998 to 24 December 1998; and,

1.1.3 Lifespan Financial Planning Pty Ltd since on or about 11 December 1998.

1.2 ASIC believes that White and Meuwissen have contravened a securities law (s829(d) of the *Corporations Law*) and that White and Meuwissen have not performed and will not (but for these undertakings being proffered) perform efficiently, honestly and fairly the duties of a representative of a dealer (s.829(f)(i) and (g)(i) of the *Corporations Law*).

1.3 White and Meuwissen recommended to clients that they invest in a product described as the "Protected Lending option strategy" which was developed in conjunction with Chadmist Pty Ltd and Wilsop Pty Ltd trading as "Best Practice Investments" and involving a Protected Lending facility provided by JB Were Equity Finance Limited.

1.4 ASIC is of the view that in recommending the Protected Lending option strategy to clients White and Meuwissen:

- 1.4.1 contravened section 849 of the Law in that they failed to make adequate and proper disclosure of commissions or fees received in connection with the making of a recommendation or a dealing by the client in securities as a result of the recommendation;
- 1.4.2 contravened section 851 of the Law in that they made recommendations to clients when they did not have a reasonable basis for making those recommendations;
- 1.5 White and Meuwissen acknowledge ASIC's concerns set out in this undertaking.
- 1.6 In agreeing to accept this Undertaking ASIC has had regard to the undertakings White and Meuwissen have given below.

2. UNDERTAKINGS

Pursuant to s.93AA of the ASC Law, White and Meuwissen each hereby undertake that they will:

- 2.1. appoint an independent and suitably qualified party ("the Consultant") by 30 June 2000 approved by ASIC to:
 - 2.1.1 conduct a review of the training, supervision and compliance procedures of Neil White and Glenn Meuwissen trading as "Meuwissen & White Financial Services" ("MWFS") in order to:
 - (a) identify any deficiencies or inadequacies in those procedures; and
 - (b) make recommendations arising from the review to ensure that such procedures will in the future comply with the requirements of the *Corporations Law* and meet appropriate industry standards;
 - 2.1.2 develop and oversee a course of professional training to be undertaken and satisfactorily completed by White and Meuwissen to ensure that, in the conduct of their profession as financial planners, they will comply with the requirements of the *Corporations Law* and perform their duties in a way that meets appropriate industry standards;
- 2.2. cause the Consultant to report to Mark Horton-Andrews, Senior Lawyer of the Victorian Regional Office of ASIC by 31 August 2000 ("the first report") as to whether, in their opinion:
 - 2.2.1 the training, supervision and compliance program of MWFS are adequate and appropriate to ensure compliance with the *Corporations Law* and appropriate industry standards; and
 - 2.2.2 the professional skills and knowledge of White and Meuwissen respectively, are adequate and appropriate to ensure that they each understand their obligations under the *Corporations Law* and appropriate industry standards;

- 2.3. implement all recommendations made as a consequence of the review and in relation to the course of professional training referred to in paragraph 2.1 within 2 weeks of such recommendation being made unless ASIC directs them not to implement any recommendation or recommendations;
- 2.4. subject to paragraph 2.3 above, cause the Consultant to conduct a further review of the training, supervision and compliance procedures of MWFS six months after the date of the first report and to provide a further report ("the second report") to Mark Horton Andrews, Senior Lawyer of the Victorian Regional Office of ASIC on whether:
 - 2.4.1 all recommendations made in the first report have been adopted;
 - 2.4.2 the procedures of MWFS were adequate and appropriate to ensure compliance with the *Corporations Law* and appropriate industry standards since the first report; and
 - 2.4.3 White and Meuwissen have complied with sections 849 and 851 of the *Corporations Law* in relation to securities recommendations made and financial planning services provided to clients during the six month period;
 - 2.4.4 White and Meuwissen are complying with the *Corporations Law* and appropriate industry standards generally.
- 2.5. provide copies of the first and second reports to the licensed dealer, Lifespan Financial Planning Pty Ltd, within seven days of receipt by White and Meuwissen.
- 2.6. immediately following the execution of this undertaking, write to all clients who invested in the Protected Lending option strategy in terms approved by ASIC:
 - 2.6.1 explaining the circumstances giving rise to these undertakings;
 - 2.6.2 providing a description of how the Protected Lending option strategy operated, advising who the parties were, and what the respective roles of each of the parties were (including advising that determinations made as to the acquisition and disposal of securities were made by Best Practice Investments).
 - 2.6.3 disclosing all commissions and fees paid to White and Meuwissen in relation to the Protected Lending option strategy;
 - 2.6.4 providing a detailed financial statement in respect of each client explaining money received, money paid, trading balance and actual fees and charges for each client in relation to the Protected Lending option strategy
 - 2.6.5 advising that where there is any discrepancy between the amount or percentage of any fees and charges originally disclosed to clients, and actual fees and charges indicated by the detailed financial statement, the difference will be refunded to clients in full;

- 2.7. review all client files to identify any discrepancy between fees and charges disclosed to clients, and actual fees and charges paid by those clients and refund in full the amount of the any discrepancy to all affected clients;
- 2.8. not make application in their own right, or as a director or responsible officer of a company that applies to become a licensed dealer in securities for a period of 3 years from the date of this undertaking without the approval of ASIC;
- 2.9. not seek, for a period of 3 years from the date of this undertaking, to become the authorised representatives of a licensed dealer in securities other than Lifespan Financial Planning Pty Ltd without the written approval of ASIC.
- 2.10. in the event of any material breach of these undertakings:
 - 2.10.1 cease to hold a proper authority from a dealer or investment adviser immediately on receiving Notice of a material breach of these undertakings from ASIC; and
 - 2.10.2 not apply for a proper authority from any dealer or investment adviser for a period of five years from the date of receiving such notice.

ACKNOWLEDGMENTS

White and Meuwissen each acknowledge that:

- 3.1. ASIC may:
 - 3.1.1. issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
 - 3.1.2. from time to time publicly refer to this undertaking; and
 - 3.1.3. make this undertaking available for public inspection.
- 3.2. this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.
- 3.3. this undertaking has no operative force until accepted by ASIC.
- 3.4. they have obtained legal advice in relation to the content and effect of this undertaking.

3.5 these undertakings and acknowledgments apply to each of Neil John White and Glenn Rayner Meuwissen individually, so that a breach of these undertakings by either of them is taken to be a breach by the other of them as well.

3.6 ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order.

SIGNED BY NEIL JOHN WHITE

in the presence of: 19/6/00

John Whelan

witness

JOHN WHELAN

name (print)

3/321 Exhibition St

Melbourne 3000

address

Solicitor

occupation

SIGNED BY GLENN RAINER

MEUWISSEN in the presence of: Glenn Meuwissen

John Whelan

witness

JOHN WHELAN

name (print)

3/321 Exhibition St

Melbourne 3000

address

Solicitor

occupation

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION PURSUANT TO ASIC ACT S93AA BY ITS DULY AUTHORISED DELEGATE

Jamie Orchard

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Director Enforcement

Victorian Regional Office

22 June 2000